Supreme Court, U.S.
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No. 91-8230

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

TERRENCE FRANK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

KENNETH W. STARR
Solicitor General

ROBERT S. MUELLER, III
Assistant Attorney General

THOMAS E. BOOTH
Attorney

Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTION PRESENTED

Whether the district court was required to give petitioner's requested jury instruction on the effect of a verdict of not guilty by reason of insanity.

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OPINION BELOW

The opinion of the court of appeals, Pet. App. 1a-13a, is reported at 956 F.2d 872.

JURISDICTION

The judgment of the court of appeals was entered on June 3, 1991. On February 11, 1992, the court denied a petition for rehearing. Pet. App. 1a. The petition for a writ of certiorari was filed on May 11, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of Arizona, petitioner was convicted on two counts of

second-degree murder, in violation of 18 U.S.C. 1113; two counts of assault with intent to commit murder, in violation of 18 U.S.C. 113(a); and four counts of using a firearm during a violent crime, in violation of 18 U.S.C. 924(c). He was sentenced to 35 years' imprisonment. The court of appeals affirmed. Pet. App. 1a-13a.

1. On June 24, 1988, petitioner shot and killed Eugene George and Irvin Harvey at the Harveys' home in a remote part of the Navajo Indian Reservation in Arizona. Petitioner also shot and wounded Esther Harvey and Louis Harvey. Pet. App. 3a.

At trial, petitioner raised an insanity defense. Petitioner asked the district court to instruct the jury that

> [i]f you find [petitioner] not guilty by reason of insanity, the law requires that he be committed to a suitable facility until such time, if ever, that the Court finds he may safely be released back into the community.

Pet. App. 7a. The court declined to give petitioner's proposed instruction. Ibid.

2. The court of appeals affirmed. Pet. App. 1a-13a. The court upheld the trial court's refusal to give petitioner's proposed jury instruction. The court noted (Pet. App. 8a) that "[i]t has long been the law that it is inappropriate for a jury to consider or be informed of the consequences of their verdict." Such instructions, the court explained, "tend to draw the attention of the jury away from their chief function as sole judges of the facts, open the door to compromise verdicts and to confuse the issue or issues to be decided." Ibid. (quoting Pope v. United States, 298 F.2d 507, 508 (5th Cir. 1962)). The court observed

that federal courts generally instruct juries that they are not to consider the consequences of the verdict. Pet. App. 8a.

Relying on prior circuit precedent, the court held that a jury should not be instructed on the effect of a verdict of not guilty by reason of insanity. The court declined to follow Lyles v. United States, 254 F.2d 725 (D.C. Cir. 1957) (en banc), cert. denied, 356 U.S. 961 (1958), noting that "[n]o other circuit has adopted the Lyles doctrine since it was published in 1957." Pet. App. 9a. The court held that the Insanity Defense Reform Act of 1984 does not address the subject of jury instructions and therefore does not require a different result. Pet. App. 10a.[1/]

Judge Hug dissented. In his view, the trial court erred by refusing to give petitioner's requested instruction on the effect of a verdict of not guilty by reason of insanity. Judge Hug conceded that the Insanity Defense Reform Act "does not require a jury instruction of any sort," and observed that "[n]o other circuit has considered this question since the enactment of the Reform Act." Pet. App. 11a. But Judge Hug concluded that jurors often believe that a defendant will be released if he is found not guilty by reason of insanity, and that consequently the failure to give an instruction on the effect of such a verdict may result in unwarranted verdicts of guilty. Pet. App. 11a-13a.

1/ The court of appeals also upheld the district court's determinations that petitioner was competent to stand trial, Pet. App. 3a-4a, and that petitioner's confession was admissible, id. at 4a-7a. Petitioner has not raised those issues in this Court.

ARGUMENT

Petitioner contends (Pet. 13-27) that the district court erred by refusing to give an instruction on the effect of a verdict of not guilty by reason of insanity. That contention warrants no further review.

The courts of appeals, with the exception of the District of Columbia Circuit, have held that a district court is not required to instruct the jury as to the effect of a verdict of not guilty by reason of insanity. See, e.g., United States v. Portis, 542 F.2d 414, 420-421 (7th Cir. 1976); United States v. Alvarez, 519 F.2d 1036, 1047-1048 (3d Cir. 1975); United States v. McCracken, 488 F.2d 406, 422 (5th Cir. 1974); United States v. Borum, 464 F.2d 896, 900-901 (10th Cir. 1972); Evalt v. United States, 359 F.2d 534, 544-547 (9th Cir. 1966). Those decisions rest on the principle that a jury should base its verdict solely on the evidence, and not on considerations of punishment or the consequences of the verdict. See United States v. Rogers, 422 U.S. 35, 40 (1975) (jury should have been admonished to reach its verdict without regard to the sentence to be imposed). As the court of appeals noted (Pet. App. 8a), instructions about such matters may distract the jury from its proper role as the finder of fact, confuse the issues, and increase the likelihood of compromise verdicts. See United States v. Reed, 726 F.2d 570, 579 (9th Cir.), cert. denied, 469 U.S. 871 (1984); United States v. Pope, 298 F.2d 507, 508 (5th Cir. 1962).

In Lyles v. United States, 254 F.2d 725 (D.C. Cir. 1957) (en banc), cert. denied, 356 U.S. 961 (1958), the District of Columbia Circuit, construing a statute applicable only in the District of Columbia, held that the trial court was required to instruct a jury that a verdict of not guilty by reason of insanity would result in hospitalization of the defendant. The District of Columbia statute expressly authorized a verdict of not guilty by reason of insanity and provided for commitment of defendants acquitted by reason of insanity. The court concluded that the jury was entitled to know the effect of the insanity verdict, just as it knew from common knowledge the effect of a verdict of guilty or not guilty. 254 F.2d at 728.

When Lyles was decided, federal law did not specifically provide for a verdict of not guilty by reason of insanity, or for the commitment of defendants who were acquitted by reason of insanity. See Evalt v. United States, 359 F.2d at 544-545. In 1984, however, Congress enacted the Insanity Defense Reform Act, Pub. L. No. 98-473, Title II, § 403(a), 98 Stat. 2057 (codified at 18 U.S.C. 17, 4241-4247). That Act expressly provides for a verdict of not guilty by reason of insanity and for the commitment of defendants who are found not guilty by reason of insanity. See 18 U.S.C. 4242-4243.

Contrary to petitioner's suggestion (Pet. 18), the statute plainly does not require district courts to instruct a jury on the effect of a verdict of not guilty by reason of insanity. As the court of appeals noted (Pet. App. 10a), the statute simply does not

address that question. It is true that a Senate Report stated that

> [t]he Committee endorses the procedure used in the District of Columbia whereby the jury, in a case in which the insanity defense has been raised, may be instructed on the effect of a verdict of not guilty by reason of insanity. If a defendant requests that an instruction not be given, it is within the discretion of the court whether to give it or not.

S. Rep. No. 225, 98th Cong., 1st Sess. 240 (1983) (footnotes omitted). Of course, statements in committee reports are not legislation. Indeed, the Committee's reference to the procedure used in the District of Columbia indicates that Congress (or at least the Committee) was aware of the Lyles decision, but chose not to incorporate that decision into the statute. In any event, the Senate Report did not suggest that the district court is required to give an instruction on the effect of a verdict of not guilty by reason of insanity, but only that the Committee endorsed a procedure under which the district court "may" give such an instruction.

Petitioner asserts (Pet. 19-26) that an instruction is necessary because jurors are likely to speculate about the consequences of a verdict of not guilty by reason of insanity. But district courts routinely instruct juries that they are not to concern themselves with the consequences of the verdict, and the "almost invariable presumption of the law" is "that jurors follow their instructions." Richardson v. Marsh, 481 U.S. 200, 206 (1987) (citing Francis v. Franklin, 471 U.S. 307, 325 n.9 (1985)). Moreover, an instruction concerning the effects of a verdict of not guilty by reason of insanity might work to the disadvantage of some

defendants. "A juror who is convinced that a defendant is dangerous, but who believes that [the defendant] did not * * * commit the crime charged, might be willing to compromise on a verdict of not guilty by reason of insanity rather than insist on an acquittal." Government of the Virgin Islands v. Fredericks, 578 F.2d 927, 936 (3d Cir. 1978).

The courts of appeals should have an opportunity to consider these issues in the light of the Insanity Defense Reform Act. As the dissenting judge recognized (Pet. App. 11a), "[n]o other circuit has considered this question since the enactment of the Reform Act." Petitioner's suggestion (Pet. 17) that the court of appeals decision conflicts with United States v. Neavill, 868 F.2d 1000 (8th Cir.), rehearing en banc granted, 877 F.2d 1394 (1989), appeal dismissed, 886 F.2d 220 (1989), is incorrect. As petitioner concedes (Pet. 17), "Neavill possesses no precedential value, because it was vacated and subsequently dismissed." Nor does United States v. Pryor, 960 F.2d 1 (1st Cir. 1992) -- a case that is not cited in the petition -- conflict with the decision in this case. Pryor held only that the district court's instruction accurately described the effect of a verdict of not guilty by reason of insanity; the court did not consider whether the district court's refusal to give such an instruction would have been error. Accordingly, further review in this case is not warranted.[2/]

2/ Petitioner notes (Pet. 20-22) that some state courts have held that a trial court must grant a defendant's request to give an instruction on the effect a verdict of not guilty by reason of insanity. Other state courts have held that such an instruction is improper, while still others have held that the decision whether to

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

ROBERT S. MUELLER, III
Assistant Attorney General

THOMAS E. BOOTH
Attorney

JULY 1992

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give such an instruction is committed to the trial court's discretion. See Pet. 22 n.8. The state court decisions establish the state law on this issue; they do not conflict with decisions of federal courts establishing federal law.

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CERTIFICATE OF SERVICE

It is hereby certified that all parties required to be served have been served copies of the **BRIEF FOR THE UNITED STATES IN OPPOSITION** by mail on July 9, 1992.

JON M. SANDS
ASST. FEDERAL PUBLIC DEFENDER
320 N. CENTRAL AVENUE
SUITE 200
PHOENIX, AZ 85004

KENNETH W. STARR
Solicitor General

July 9, 1992